UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 26

ALCATEL USA, INC.
Employer

and

Case No. 26-UC-186
(formerly 16-UC-187) 1/

LOCAL UNION 787, INTERNATIONAL UNION OF ELECTRONIC, ELECTRICAL, SALARIED, MACHINE & FURNITURE WORKERS
Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds: 2/

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and

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1/ The General Counsel issued an Order Transferring Case from Region 16 to Region 26. Pursuant to said Order, to the extent that further proceedings are appropriate to effectuate this Decision, this case will automatically transfer back to Region 16 and will continue as Case 16-UC-187 except that Region 26 will retain jurisdiction only with respect to issues relating to the substance of this Decision.

2/ The Employer and the Petitioner filed briefs, which have been duly considered.

it will effectuate the purposes of the Act to assert jurisdiction herein. 3/

3. The Petitioner is a labor organization within the meaning of the Act.

4. The Petitioner proposes to clarify the existing bargaining unit by adding the employees performing Cross Connect test work and functionally similar work at the Employer's PB3 facility in Plano, Texas to the current production and maintenance employee unit at the Employer's Richardson, Texas facility.

The Employer and the Petitioner have a longstanding collective bargaining relationship at the Richardson facility. The parties have a current collective bargaining agreement (CBA), which is in effect for the period of May 2, 2000 through May 1, 2003. The prior CBA was effective during the period of 1995 to 2000. When the 1995-2000 CBA was negotiated, the Employer's name was Alcatel Network Systems, Inc. In 1998, Alcatel Network Systems merged with DSC Communications, Inc., which had several facilities in Plano, Texas, to become Alcatel USA, Inc. The DSC facilities in Plano were nonunion. The Employer continued to recognize the 1995-2000 CBA at the Richardson facility. The 1995-2000 and 2000-2003 CBAs cover "all production and maintenance employees in the Employer's Dallas County, Texas electronic equipment plants". Richardson is in Dallas County while Plano is in Collin County.

After the merger, the Employer, in July 1999, decided to restructure its facilities

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3/ The parties stipulated Alcatel USA, Inc., hereinafter referred to as the Employer, is a Delaware corporation with offices and places of business in Richardson and Plano, Texas, where it is engaged in the manufacture of telecommunications transmission equipment. Within the past 12 months, a representative period, the Employer purchased and received goods valued in excess of $50,000 directly from locations outside the State of Texas.

to become more efficient. DSC had the following plants in Plano: PB3, PB7 (Plano Parkway), and Jupiter 1, 2, 3 and 5 (Jupiter Road). These plants are about 6 miles apart and 7 miles from the Richardson facility. The restructuring, which the Employer called the "Footprint", began in late 1999. The PB3 facility became the Advanced/New Product Test Center, where the Employer performs all functional and systems testing on advanced and new product technologies. Specifically, these products are Switch, Access, IMTN, Optical and Cross Connect. Of the five products, only the Cross Connect was formerly an Alcatel product, on which both functional and systems testing had previously been performed at the Richardson facility. The Access and Optical products had previously been tested at the Jupiter 2 facility, the Switch had been tested at the Jupiter 1 facility and IMTN at the PB7 facility.

A second aspect of the restructuring involved the Customer Return Goods (CRG) function. Previously, the CRG function was performed at each facility that tested the particular product. Under the "Footprint", the Richardson facility performs the CRG function for mature products and the PB3 facility performs the CRG function for the five products that it tests. Thus, under the restructuring, the Richardson facility lost the CRG function for the Cross Connect products, except for some APS modules of the 1680 OGX product, but gained the CRG function for other products from the Jupiter and PB7 facilities. The PB3 facility performs CRG testing on different APS modules of the 1680 OGX product.

A third aspect of the "Footprint" was the consolidation of the finished goods distribution centers to the Jupiter 5 facility. Previously, each facility, including the Richardson, Jupiter, PB3 and PB7 facilities as well as the Employer's facilities in North

Carolina and Mexico, handled their own distribution. The Employer also eliminated the Optical Components Group (OCG), which had been handled at the Richardson facility, and moved such work to a separate corporation, Optronix Inc., which is a wholly-owned subsidiary of Alcatel France.

The last aspect of the "Footprint" was the transfer of certain component subassembly manufacturing work, including Access and Switch, from the PB3 facility to the Richardson facility. Thus, the Richardson facility performs the following: surface mount technology (SMT) assembly, hand assembly, in-circuit testing, paired board assembly and "empty rack" testing and assembly. Before the restructuring, the Richardson facility had two product lines, Cross Connect and light wave, and performed four types of testing, in-circuit, functional, systems and empty rack.

As referenced above, the Employer performs various types of testing. Specifically, there are five major types of product testing: systems, functional, in-circuit, empty rack and CRG. The PB3 facility performs systems and functional testing on five advanced/new products, Switch, Access, IMTN, Optical and Cross Connect. The Richardson facility performs systems and functional testing of mature products, such as the light wave or 1648/1610 products. The Richardson facility also performs all assembly and empty rack testing for the 1648/1610, Cross Connect, Access and Switch products. Previously, the Access and Switch assembly and empty rack testing had been performed at the PB3 facility.

After the restructuring, the PB3 facility employed approximately 256 test technicians and lead technicians. Of these 256 employees, 54 transferred from the Richardson facility in January – March 2000, 86 transferred from the PB7 and Jupiter

facilities and the remaining 126 employees are new hires or former PB3 employees. Of the 54 test technicians who transferred from the Richardson facility, approximately 25 had performed functional or systems testing on the Cross Connect products. Concerning the equipment, the PB3 facility has 124 testing consoles, of which 52 are from the Richardson facility and 72 from the Jupiter 1 and 2 facilities.

Prior to the restructuring, on January 1, 2000, the Richardson facility employed 435 bargaining unit employees of which over 100 were test technicians. As previously stated, 54 test technicians transferred to the PB3 facility between January and March 2000. Additionally, 28 other employees ended their employment at the Richardson facility through retirement, transfer or promotion. Due to other aspects of the restructuring, the Richardson facility has added 54 new employees so that it currently employs approximately 407 unit employees. Of the 407 employees, 60 to 70 are test technicians.

The transfer of the 54 test technicians from the Richardson facility to the PB3 facility under the "Footprint" was on a voluntary basis. These transfers occurred after a Union Executive Board member asked the Employer in July 1999 whether unit employees could bid on positions at the PB3 facility. In August 1999, the Employer agreed to permit qualified unit employees to bid on these positions. In September 1999, the Employer posted the PB3 facility test technician jobs for bid. The posting stated the positions were salaried, non-exempt jobs at the PB3 facility, which was outside the bargaining unit. Approximately 70 unit employees bid on the jobs and 58 met the requisite requirements, which were 4 to 6 years of testing experience as well as microprocessor training. Of the 58 qualified applicants, 54 accepted the bid.

The Employer asserts there are two preliminary issues, which should cause the petition to be dismissed. First, the Employer asserts the petition is untimely because the petition was filed after the parties reached a new CBA and the Petitioner did not reserve the right to file a UC petition during negotiations. The Petitioner asserts the issue of the CBA's applicability to the PB3 facility at Plano (Collin County) was left unresolved at the time of the agreement on a new CBA in two ways. The Petitioner initially filed a UC petition in 16-UC-184 in March 2000 and withdrew it on March 10, 2000 based upon the parties' agreement that the withdrawal was "without prejudice to the Petitioner's right to re-file at a future time" and did not "constitute an abandonment by the Union of its position". In subsequent contract negotiations in March and April 2000, the Petitioner proposed broadening the recognition clause to include all of the Employer's Texas facilities. The Employer did not agree to this language and on April 13, 2000, the Petitioner withdrew that proposal. In the early morning hours of April 15, 2000, Porter Foster, the Petitioner's president, gave a letter to the Employer's negotiator, Frank O'Reilly, wherein the Petitioner asserted it was not waiving its position on the PB3 facility in Plano. Foster stated he gave the letter to O'Reilly before reaching a final agreement on the terms of the CBA while O'Reilly said it was after reaching agreement on a new CBA. On about April 17, 2000, the Union ratified the new CBA.

The Employer cites **Edison Sault Electric Co**., 313 NLRB 753 (1994), and **Wallace-Murray Corp**., 192 NLRB 1090 (1971), for the proposition that the union must reserve its position to file a UC petition during negotiations. In **Edison** and **Wallace**, the contract had been ratified and/or executed before a UC petition was filed and without the right to file a UC petition having been reserved. In the case at bar, the CBA had not

been ratified or executed before the Petitioner gave the letter to the Employer continuing to reserve the right to file a UC petition. Thus, the record evidence reflects that the Petitioner reserved the right to file this UC petition. Therefore, I find the petition is not untimely.

The second issue is that the recognition clause within the CBA confines the unit to Dallas County and the PB3 facility is in Collin County; thus, the Employer asserts the CBA, by its terms, cannot cover employees at the PB3 facility. Moreover, the Employer has previously transferred work to its facilities in Longview, Texas and Raleigh, North Carolina and the Petitioner did not claim it represented the employees performing the work in those two plants. The Petitioner asserts this language has no bearing on the issue of whether the PB3 facility in Plano is an accretion because the PB3 facility did not exist in 1995, when one CBA was negotiated, and in 2000, the Petitioner reserved its rights as found above. In support of its position that the limiting language within the contract is not dispositive, the Petitioner cites **Mercy Health Services**, 311 NLRB 367 (1993), wherein the parties' CBA had a recognition clause, which was limited to one facility in one city. However, the Board still found an accretion and clarified the unit to include two nurses transferred from the original facility to a new location some 40 miles away notwithstanding the limiting language in the unit description. Based thereon, I find the CBA's language, which limits the bargaining unit to Dallas County, does not preclude consideration of whether the PB3 facility in Plano is an accretion to the Richardson facility.

After resolution of the above procedural issues, it must be determined whether the PB3 facility is an accretion to the Richardson facility. This issue is governed by the

Board's decision in **Gitano Distribution Center**, 308 NLRB 1172 (1992), which held when an employer transfers a portion of its employees at one location to a new location, the new facility will be presumptively a separate appropriate unit. In determining whether the presumption is rebutted, the Board reviews such factors as central control over daily operations and labor relations, including the extent of local autonomy, degree of employee interchange, distance between locations, similarity of employee skills, functions and working conditions, and bargaining history. **U.S. Tsubaki, Inc**., 331 NLRB No. 47 (2000). The two most important factors in finding an accretion are common day-to-day supervision and employee interchange. **Gitano**, *supra*, at 1174; **Towne Ford Sales**, 270 NLRB 311, 311-12 (1984). If the presumption is not rebutted, the Board applies the following test:

> If a majority of the employees in the unit at the new facility are transferees from the original bargaining unit, we will presume that those employees continue to support the union and find that the employer is obligated to recognize and bargain with the union as the exclusive collective-bargaining representative of the employees in the new unit. Absent this majority showing, no such presumption arises and no bargaining obligation exists.
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> **Gitano**, *supra*, at 1175.

Thus, in the case at bar, the Petitioner must rebut the presumption that the PB3 facility is a separate appropriate unit. The first factor to consider is whether the Employer maintains central control over the daily operations of the Richardson and PB3 facilities. Dennis Britt is the Senior Director for the Richardson facility and as such manages its daily operations. Britt is only over the Richardson facility and does not have any authority over the PB3 facility or any other facility of the Employer. The Richardson facility has supervisors for both the first and second shifts. The supervisors

do not have any involvement with the PB3 facility or any other of the Employer's facilities.

Gregory Anderson is the Senior Director for the Advance Products Testing Center located within the PB3 facility. As such, Anderson oversees all testing at the PB3 facility and has eight supervisors, who report to him from the 5 separate test departments, Switch, Access, IMTN, Cross Connect and Optical. Anderson was promoted to this position in November 1999 from his previous position as test manager at the Richardson facility. Neither Anderson nor the eight supervisors have any involvement or authority over the Richardson facility. Anderson and one supervisor, Gary Boult, were promoted from the Richardson facility.

Richardson facility Director Britt and Anderson report to Frank O'Reilly, the Employer's Vice-President for Texas Operations. O'Reilly has eight facilities, Richardson, PB3, PB6, PB7, Jupiter 1, Jupiter 2, Jupiter 3 and Jupiter 5, which report to him. O'Reilly reports to Danny Wade, the Group Vice-President for Operations. Wade is one of eight vice-presidents who report to the Senior Vice-President of Business Units. The Petitioner's president, Porter Foster, testified he had spoken to Wade on only two occasions, at State of Business meetings, over a two-year period. In **Silver Court Nursing Center**, 313 NLRB 1141, 1146 (1994), and **Passavant Retirement & Health Center**, 313 NLRB 1216, 1218-19 (1994), the Board found day-to-day supervision was the crucial factor in determining central control or local autonomy, not the individuals who set management policies. Thus, the record evidence reflects local autonomy because the day-to-day supervision of the Richardson and PB3 facilities is totally separate.

The next factor to consider is whether the employer has central control over the labor relations at the Richardson and PB3 facilities. Rebecca Guynes is the labor relations manager for the Richardson facility. There is no record evidence that Guynes has any authority over the PB3 facility or any other of the Employer's facilities. Sharon Stout, the human resources manager, and Ginny Lilly, the senior human resources representative, who are located at the Richardson facility, administer the benefits for the Richardson facility employees. Stout and Lilly do not administer the benefits for the PB3 facility. Lilly reports to Toby Todd, the Director of Corporate Benefits, who reports to Jeff Orem, the Vice-President of Compensation and Benefits. The Petitioner's Vice-President, Sandra Hudson, testified Stout and Lilly check with Todd on all questions that arise concerning benefits. Contrary to Hudson's testimony, Guynes testified she has dealt with Lilly and Stout on numerous occasions in the past 20 years concerning benefits for the Richardson employees and only on one or two occasions have they contacted Todd about a matter. The labor relations manager for the PB3 facility is Earl Calloway. There is no record evidence that Calloway has any authority over the Richardson facility.

The Petitioner asserts the labor relations for the Richardson and PB3 facilities are centralized. This assertion is based upon the fact that Teas operations Vice-President O'Reilly represented the Employer during the 2000 contract negotiations for the Richardson facility and held meetings with the Petitioner to discuss the "Footprint" and the Employer's corporate organizational charts. But, the record fails to reflect that O'Reilly has any daily control over labor relations at the Richardson and PB3 facilities. Instead, the evidence reflects O'Reilly's involvement with the Richardson facility was

limited to the above two events. O'Reilly's involvement in these two events appears to be an anomaly due to their large impact on the Employer.

As previously noted, the Employer's organizational charts reflect the individuals in charge of the day to day administration of labor relations and benefits at the Richardson and PB3 facilities. Guynes and Stout, at Richardson, and Calloway, at PB3, all report to Dan Allman, the Director of Human Resource Operations for the Richardson and Plano facilities. In turn, Allman reports to Jim Staron, the Vice-President for Human Resources for the Texas facilities as well as two other of the Employer's facilities. Guynes testified that in the past two years she has spoken to Allman and Staron three times each. Foster, the Petitioner's president, has never met or spoken to Allman and Staron. In **Towne Ford**, *supra*, at 311-12, the Board found day-to-day supervision of labor relations matters, not who formulated the labor policies, was the critical factor in determining whether there was central control. Also *see* **Silver Court Nursing Center**, *supra*, at 1146. Since the record is devoid of any evidence that Allman or Staron have any daily control over the Richardson or PB3 facilities, then this critical factor does not support an accretion.

The next issues to consider are the degree of employee interchange between the Richardson and PB3 facilities and the distance between the facilities. As previously stated 54 test technicians at the Richardson facility voluntarily transferred to the PB3 facility in the first quarter of 2000. Also at that time, some Richardson supervisors, including Anderson and Boult, transferred or were promoted to the PB3 facility. Since the permanent transfers at the opening of the Advanced/New Product Center, there has

been little interaction between employees of the two facilities. The record is devoid of any evidence of temporary transfers between the Richardson and PB3 facilities.

Furthermore, there is little evidence of any work-related interaction between employees of the two facilities. Regarding employee interaction, the Petitioner's Vice-President, Sandra Hudson, testified that expediters from a Plano plant, she did not know which one, pickup orders daily at the Richardson plant. Anderson, the Employer's Senior Director at PB3, testified the expediters are from Jupiter 2 and 3, not PB3. Further evidence regarding employee interaction reflects that on one occasion, a PB3 employee picked up Cross Connect modules manufactured at the Richardson facility for transportation to the PB3 facility for testing and on another occasion, Jupiter plant employees were at the Richardson facility on a Sunday to locate modules. Also, on one occasion, employees from one of the Jupiter plants installed equipment at the Richardson facility in order that production could commence on the Switch and Access products. As shown above, these occasions do not demonstrate PB3 and Richardson employees interacting except on one occasion. One of the reasons for their lack of interaction is that the two facilities are located about 7 miles apart so there are no shared work entrances, work areas or break areas. Thus, this crucial factor fails to support an accretion.

The Petitioner asserts the employee interaction can be found through the functional integration of the two plants. The Richardson plant assembles the Switch, Access and Cross Connect products and other products. The Richardson facility also performs empty rack testing on the Switch, Access and Cross Connect products as well as other products. After these processes, the Switch, Access and Cross Connect

products are transported to the PB3 facility for systems and functional testing. As previously stated, the Richardson facility had previously performed systems and functional testing on the Cross Connect products. Also, each facility performs a portion of the testing on Customer Return Goods (CRG) but each is a different function. Thus, the Petitioner asserts this functional integration of the two facilities is evidence of employee interaction. But, the record evidence reflects that despite the movement of the same products from the Richardson facility to the PB3 facility as part of the production process, there is a lack of employee interaction between the two facilities. The fact that products are moved from plant to plant in the production process does not establish employee interaction and is not a factor in determining whether the presumption of a separate appropriate unit has been rebutted. **U.S. Tsubaki**, *supra*.

The next factor to consider is whether the employee skills and functions are similar. At both the Richardson and PB3 facilities, the Employer employs test technicians. But, some of the testing is different and is performed on different types of products. At the Richardson facility, the test technicians are performing "empty rack" testing on these products, 1648/1610, Cross Connect, Access and Switch as well as systems and functional testing on mature products, such as the 1648/1610. At the PB3 facility, the test technicians are only performing systems and functional testing on five new or advanced products, Switch, Access, IMTN, Optical and Cross Connect. Thus, none of the testing at the two facilities is the same type on the same product.

The Employer asserts the job skills of test technicians at the two facilities are different while the Petitioner disputes this assertion. The Employer cites the fact that the test technicians at the Richardson facility only are trained to test one product while

the test technicians at the PB3 facility are cross-trained to test several different products. Furthermore, the test technicians at the PB3 facility are required to have microprocessor training, which is not required at the Richardson facility. The record evidence supports the Employer's assertions on these points; however, the evidence fails to reflect that such differences significantly alter the varied skills involved.

The next factor to consider is whether the wages, benefits and working conditions at the two facilities are similar. Concerning wages, the PB3 facility employees are salaried while the Richardson facility employees are hourly paid. If one computes the average salary of the PB3 facility test technicians into hourly wages, then the PB3 employees average 50 cents to one dollar greater, or seven percent, than the highest wage rate offered at the Richardson facility for test technicians. Concerning the benefits, under the current CBA at the Richardson facility, such benefits as vacation and 401(k) plan are identical. Thus, there is some similarity in the wages, benefits and working conditions.

The last factor is bargaining history. As previously stated, when the Employer acquired the DSC facilities in 1998 and thereafter restructured the plants, the Petitioner sought for the CBA to cover the transferred work but the Employer opposed this. In 2000, the parties agreed to a new CBA that did not cover the PB3 facility but the Petitioner reserved that issue for a UC petition.

In conclusion, the Petitioner has failed to establish the two critical factors in rebutting a separate appropriate, common day-to-day supervision and labor relations and employee interchange and interaction. The similarity in job skills and functions and some similarity in wages and benefits are insufficient to establish an accretion. **Silver**

Court Nursing Center, *supra*. Thus, clarification of the bargaining unit is not warranted.

Under the **Gitano** test, if the appropriateness of a separate bargaining unit has not been rebutted, then one must determine whether a majority of the employees in the PB3 facility are transferees from the Richardson facility. As stated above, the Richardson facility transferees account for 54 of the 256 test technicians and lead technicians at the PB3 facility. Thus, the Richardson transferees are not a majority at the PB3 facility. Despite this, the Petitioner asserts the Employer should have to recognize and bargain with the Petitioner concerning the Cross Connect department employees at the PB3 facility. In support of this assertion, the Petitioner cites **Armco Steel Co.**, 312 NLRB 257 (1993), which held the transferred employees may constitute a majority in a separate, smaller bargaining unit. But, the Petitioner's evidence fails to support that the employees testing the Cross Connect products are a separate appropriate bargaining unit when the evidence shows that the PB3 test technicians perform testing on multiple products and all of the test technicians perform similar job functions, have the same wages, benefits and working conditions and have the same day-to-day supervision and labor relations administration. Thus, the record evidence fails to support a finding that the employees performing Cross Connect testing at the PB3 facility can be carved out as a separate appropriate unit. Therefore, the Employer does not have an obligation to recognize the Petitioner concerning the PB3 facility employees or a sub-group of the PB3 facility employees.

ORDER

The petition filed in the above-captioned case is dismissed.

RIGHT TO REQUEST FOR REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W. Washington, DC 20570. This request must be received by the Board in Washington by **February 16, 2001**.

DATED this 2nd day of February, 2001 at Memphis, Tennessee.

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Ronald K. Hooks, Director, Region 26
National Labor Relations Board
1407 Union Avenue, Suite 800
Memphis, TN 38104-3627

CLASSIFICATION INDEX

385-7501-0000